The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 1850, CUTTACK, THURSDAY, OCTOBER 4, 2007 / ASWINA 12 , 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th September 2007

No. 10385—1i/1-(B)-95/99-(pt.)/L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 25th June, 2007 in I. D. Case No.77/99 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial dispute between the Management of Horticulturist Tritol, Jagatsinghpur and its workman Sri Siba Prasad Pradhan was referred for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 77 of 1999

Dated the 25th June 2007

Present :

Shri S. K. Mohapatra, (OSJS), (Jr. Br.)
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of Horticulturist Tritol, Jagatsinghpur	.. First-party—Management
And	
Their workman , Shri Siba Prasad Pradhan C/o-Dillip Ku. Mohanty, At-Hotel Prachi, Janapath, Unit-3, Bhubaneswar.	.. Second-party—Workman

Appearances :

Shri S.Ch. Pradhan	.. For First-party—Management
Shri S.P.Pradhan	.. For Second-party—Workman himself

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of Horticulturist Tritol, Jagatsinghpur and their workman Sri Siba Prasad Pradhan under Notification No.5323/L.E. dated 18th May 1998 vide Memo. No.11181 (5)/L.E. dated 19th August,1999 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

"Whether the action of the Horticulturist Tritol, Jagatsinghpur in terminating the services of Sri Siba Prasad Pradhan, Attendant w.e.f. 22nd November 1994 is legal and/or justified ? If not, to what relief the workman is entitled ?"

3. Shorn of all unnecessary details, the case of the workman in brief is as follows :

The workman was appointed as an Attendant under the management with effect from 2nd January 1993 in the pay scale of Rs.750 to 950/- with usual Dearness Allowance as admissible from time to time. Although the employment of the workman was against a permanent vacancy he was given *ad hoc* appointment of 44 days at a time with one or two days artificial breaks in between phases of such appointments of 44 days. Suddenly the management terminated the services of the workman on 22nd November 1994 without giving any notice or without any compliance of the provisions under Section 25-F of the Industrial Dispute Act, 1947 (hereinafter referred to as the I. D. Act.). Before termination of his service the workman had rendered 240 days of continues service within the meaning of Section 25-B of the I.D. Act. The workman after termination of his service approached the management several times for reinstatement and he was assured of the same time and again but when even after three to four years the management did not reinstate him in his service, he put-fourth his grievances before the authorities of the Labour Department who started a conciliation proceeding which ultimately failed and therefore, the present reference to this Court for adjudication of the matter.

4. The management in its written statement has challenged the maintainability of the present case on the ground that the Department of Horticulture of Government of Orissa is not an industry and therefore, there was no industrial dispute between the workman and the management.The Horticulture Department is engaged to promote interest of people in growing vegetable, fruits and flowers through seminar, training, distribution of plants/seedlings either free or at subsidised rates. The Government of Orissa does not have any commercial interest and there is no profit motive in promoting horticulture through the management. The workman was appointed as an Attendant for a period of 44 days from 2nd January 1993 and in the said letter of appointment it had been clearly mentioned that the service of the workman was purely temporary and could be terminated at any time without any notice. All the *ad hoc* appointment letters issued to the workman had such stipulation indicating that the service of the workman was purely was subject to termination without any notice and without assignment of any reason. Since the service of the workman was purely temporary his service was terminated on 22nd November 1994. There was never any malafide intention on the part of the management. The management has further contended that the second-party is not a workman and the management concerned is never an industry. On these averments the management has contended that the workman is not entitled to any relief whatsoever.

5. On the pleadings of the parties, the following issues have been framed for determination.

ISSUES

(i) "Whether the action of the Horticulturist, Tirtol, Jagatsinghpur in terminating the services of Sri Siba Prasad Pradhan, Attendant with effect from 22nd November, 1994 is legal and/or justified ?

(ii) If not, to what relief the workman is entitled to ? "

6. To answer the issue No. (i) three most important aspect must be looked into and answer to that must be found out from the evidence on record. Firstly as to whether the management concerned is an industry within the meaning of Section 2 (j) of the I.D. Act, secondly whether the second-party is a workman within the meaning of Section 2 (s) of the I.D.Act and thirdly as to whether the workman was in continuous service within the meaning of Section 25-B of the I.D. Act.

7. On the question as to whether the Horticulture Department of the Government of Orissa under which the concerned Horticulturist and the workman were working is an industry or not, the very pleadings of the management is that the aim and object of Horticulture Department is to promote development of growth of trees for bearing fruits and encouraging people to grow fruit bearing trees like coconut, mangoes, Kagai lime, Sapota, Litchi etc. and encouraging in production of vegetable and flowers and for that purpose the Department create awareness among the people and conducts various Seminars, Training from time to time. It has also been pleaded that due to such action of the Horticulture Department the farmers improve practices for better yield. The most important pleading of the management is that the Horticulture Department grows and sales plants/seedlings at subsidiary rates to the farmers and that the Department does not have any profit motive. The evidence of the witness of the management M.W.1 in his evidence has stated that the workman had been employed on temporary basis. The workman M.W.1 in his evidence has stated that he had been appointed in the office of the Horticulturist in the post of Attendant on temporary basic. Therefore it is apparent that the Horticulture Department for the purpose of carrying its aims and objects in systematic activity carried on by co-operation between itself as an employeer and its workman for providing services towards improvement of Horticulture and to supply and distribute the plants/seedlings either free or of subsidised rate with a view of satisfy the human wants and therefore, the Horticulture Department definitely comes within the meaning of 'industry' as defined under Section 2 (j) of the I.D. Act. In this context the land mark judgement of the Hon'ble Apex Court in the case of Bangalore Water Supply and Sewerage Board *vrs.* A. Rangappa reported in AIR 1978 SUPREME COURT 548 can be relied on.

8. On the question as to whether the second-party was a workman within the meaning of Section 2 (s) of the I.D. Act, the evidence of the witness for the management M.W.1 has categorically stated that the workman had been appointed under him an a Attendant on temporary basis. The evidence of the W.W.1 that he had been appointed in the office of the Horticulturist, Tirtol as an Attendant on temporary basis in the scale of Rs.750/- to 950/-. Exts. 1 to 16 proved by W.W. 1 are the xerox copies of the letters of appointment of the workman under which he had been temporarily appointed as an Attendant from time to time in the pay scale of Rs. 750 to 950/-. Thus from such evidence it is very clear that the second-party had been employed in the Horticulture Department to do manual work of an Attendant on payment of salary. In other words salary can be said to be hiring charges for the work of the second-party and therefore, the second-party was a workman as defined under Section 2 (s) of the I.D.Act.

9. On the third question as to whether the workman was in continuous service within the meaning of Section 25-B of the I.D.Act, the evidence of the workman W.W.1 is that initially he was appointed in the office of the management on 2nd January 1993 in post of Attendant in the pay scale of Rs.750 to Rs. 950/- for a period of 44 days under appointment letter Ext.1 and

thereafter from time to time he was appointed in the said post for such temporary period under appointment letters. Exts.2 to 16. Such evidence of W.W.1 has not been challenged in any manner during his cross examination. From the documentary evidence Exts. 8 to 16 it is very clear that the workman during period from 22nd November 1993 to the date of his termination from service i.e. till 21st December 1994 had been employed by the management for 343 days. The workman W.W.1 in his evidence has also stated that he had completed 240 days of work during 12 calendar months proceeding the date of his termination from service. The workman was terminated from service on 22nd November 1994 as evident from Ext.17 and the workman had rendered 343 days of service between the period from 22nd November 1993 to 21st November 1994. Therefore it is very much clear that the workman was in continuous service as defined under Section 25-B (2) (a) (ii) of the I.D. Act. Notwithstanding the evidence of M.W.1 that the workman had never worked continuously under the management during any year, the documentary evidence Exts. 8 to 16 which have not been challenged during cross-examination of W.W.1 clearly disproves such evidence of Horticulturist M.W.1.

10. The provisions under Section 25-F of the I.D.Act reads as follows :—

"25-F.—Condition precedent to retrenchment of workman- No. Workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in view of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days, average pay for every completed year of continuous services or any part thereof in excess of six months ; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the official Gazette)."

From a plane reading of Section 25-F of the I.D.Act, it is clear that the management must follow the mandatory provisions of Section 25-F of the I.D.Act, before terminating the service of a workman who was in continuous service within the meaning of Section 25-B of the I.D.Act. In the instant case as because the management has not complied with the mandatory provisions of Section 25-F of the I.D.Act while terminating the services of the workman W.W.1 it is very clear that the action of the Horticulturist, Tirtol, Jagatsinghpur (M.W.1) in terminating the service of the workman Sri Siba Prasad Pradhan (W.W.1), Attendant with effect from 22nd November 1994 is illegal and therefore, unjustified.

11. In my answer to issue (i) I have already held that the termination of service of the workman with effect from 22nd November 1994 was illegal, now it is to be considered as to what relief the workman is entitled.

Since the termination of service of the workman was illegal, the workman namely Sri Siba Prasad Pradhan is definitely entitled to the relief of reinstatement in service. On the question of Back Wages the settled principle of law is that the initial burden is on the employee (workman) to show that he had not been gainfully employed and that only after the workman has discharged much initial burden of proof it is for the employer (management) to bring on record materials to rebut such claim of the workman. In this context the decision of the Hon'ble Supreme Court in the case of KENDRIYA VIDYALAYA SANGATHAN V.S.C. SHARMA reported in (2005) 2

SUPREME COURT CASES 363 is relied on. In the instant case the workman W.W.1 has not whispered a single word in his evidence to show that he had not been gainfully employed since the date of termination of his service. Only while stating his name, residence etc. W.W.1 has stated his occupation to be unemployed but during his evidence he completely remained silent in that regard. Since the workman himself has not discharged the initial burden to show that he had not been gainfully employed, the management is not bound to pay any back wages to the workman of this case. More over it is apparent that during the intervening period i.e. from the date of termination of his service onwards the workman had not rendered any service for his employees and therefore, the golden rule of 'no work no pay' would come into play. Consequently the workman is only entitled to the relief of reinstatement in service but not to the relief of any back wages. Therefore the issue No. (ii) is answered accordingly.

12. In the premises of discussion made above, the reference is answered as follows :

The action of the Horticulturist, Tirtol, Jagatsinghpur in terminating the services of Sri Siba Prasad Pradhan, Attendant with effect from 22nd November 1994 is illegal and unjustified and therefore, the said workman namely Siba Prasad Pradhan, Attendant is entitled to the relief of reinstatement in service but without any back wages.

Dictated and corrected by me.

S.K.MOHAPATRA
25-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K.MOHAPATRA
25-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor
N.C.RAY
Under-Secretary to Government

.

Printed and published by the Director of Printing, Stationery and Publication, Orissa, Cuttack-10
OGP/SP., Ex. Gaz. No. 1236—193+11 DTP-14-12-2007 Printed-14-1-2008